



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**PAUL KADLEC *et al.*, v. DANIEL/SHERRY DORSEY
CV-10-0028-PR**

PARTIES:

Petitioners: Daniel and Sherri Dorsey.

Respondents: Paul Kadlec and Rachel Kadlec, and Duane Howell and Brenda Howell.

FACTS: Between December 1994 and October 1995, Richard Turigliatto sold three contiguous parcels of property to different buyers in three separate transactions. A dirt road ran through all three parcels, connecting to public roads that ran to the east and west of the three subject properties. In all three transactions, the conveyance contained language creating easements to use the road, but different language was used in each deed. Parcel 1 (the easternmost parcel) was conveyed “subject to the existing road traversing through the property shown as ‘Road Inter-X’” on a specified survey map. Parcel 2 (the central parcel) was conveyed “subject to an undefined easement as shown” in the survey described in the first transaction, showing “Road Inter-X.” The conveyance of Parcel 3, the westernmost parcel and the last to be sold, included “an easement over” certain real property described by metes and bounds and corresponding to the description of the roadway on the survey. All three conveyances were subsequently recorded.

The Dorseys own Parcel 2 (the central parcel) as successors-in-interest to the original buyer. In 2006, they erected a gate across the roadway at the western end of their property and fence posts blocking the middle of the roadway at the other end. This effectively closed the road to the public. In 2007, the Kadlecs and the Howells filed suit to enforce the easement (i.e., to get the road re-opened) and to recover damages. Those suits were subsequently consolidated. Kadlec and Howell are not successors in interest to Turigliatto, but own neighboring properties. Kadlecs’ property is adjacent to part of one of the original three parcels, while Howells’ property “shares a corner” with one of the original three parcels.

The parties filed cross motions for partial summary judgment, with Kadlec and Howell seeking to enforce the recorded easement, and the Dorseys seeking partial summary judgment that the Kadlecs and Howells had no beneficial interest in the easement. The trial court ruled for Kadlec and Howell, citing language from *Hunt v. Richardson*, 216 Ariz. 114, 120, 163 P.3d 1064, 1070 (App. 2007): “An easement which consists of a roadway by its very nature invites public use unless the dedicator’s intent was otherwise.” The trial court concluded that the language of the Turigliatto deed did not reflect that the grantor intended to limit the benefit of the easement to any particular parcel or person. The Dorseys appealed.

The court of appeals affirmed in a split decision, with Judges Vásquez and Eckerstrom approving the trial court's reasoning, and Judge Brammer dissenting.

ISSUE: When land is sold subject to a roadway easement, is the usual burden of proof reversed so that courts presume an intent to dedicate the roadway to public use?

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